United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: June 22, 2010

TO : Celeste Mattina, Regional Director

Region 2

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Teamsters Local 814 (JP Morgan Chase)

Case 2-CC-2776

This case was submitted for advice to determine whether the Union violated Section 8(b)(4)(B) when it displayed an inflatable rat balloon in front of entrances to three common situs work locations in furtherance of the its otherwise lawful area standards dispute. We conclude that the Region should dismiss this charge because the evidence establishes that the Union's display of the rat, alongside lawful area standards picketing, does not violate Section 8(b)(4)(B).

In the spring of 2010, Respondent Teamsters Local 814 engaged in an exchange of communications in which the Union was unable to ascertain whether BRS Relocation Services pays its employees prevailing wages. Consequently, on March 19, 2010, the Union set up a picket line in front of three of Charging Party JPMorgan Chase's Manhattan office buildings where BRS employees were working. The Region has concluded that the demonstrations at the common situses, which included ambulatory picketing and the erection of a large inflatable rat balloon, was done at times and in a manner that conformed to the rules set forth in Moore Dry Dock. I Inasmuch as there is no other, independent evidence that the Union harbored a cease doing business object, the Region has concluded that the area standards picketing was lawful.

We conclude that, under these circumstances, the Union's use of the inflatable rat balloons during the demonstrations did not transform lawful area standards picketing into unlawful Section 8(b)(4) activity. The General Counsel has argued to the Board that a union's use of a large inflatable rat balloon, considered a well-known symbol of a labor dispute, could constitute signal picketing intended to induce neutral employees to withhold their labor or to persuade third persons not to do business

¹ <u>Sailors Union of the Pacific (Moore Dry Dock)</u>, 92 NLRB 547 (1950).

with neutral business establishments.² However, in those cases, independent evidence established an unlawful Section 8(b)(4) object, which, together with the coercive use of the rat balloon, arguably made out a completed Section 8(b)(4) violation.³ Thus, we have argued that a balloon itself is merely another form of conduct tantamount to picketing; its presence does not otherwise transform a lawful object into an unlawful object under Section 8(b)(4).

Here, the Region has concluded that the Union picketed the Employer with a lawful area standards object, untainted by any contrary evidence, such as picketing at times and places where the primary employer was not on site. In these circumstances, the Union's use of the rat balloon to augment the picketing does not establish a cease doing business object under Section 8(b)(4)(B). There is no evidence that the Union intended to use the rat to induce employees to withhold services: the Union made no effort to appeal to employees, interfere with deliveries, or induce a cessation of work. In fact, the Union stationed the rat near the buildings' public entrances, rather than their service entrances or loading docks, and it disassembled it once it terminated picketing activities at each building.

Accordingly, the Region should dismiss this charge, absent withdrawal.

B.J.K.

² The General Counsel has made essentially the same Section 8(b)(4) signal picketing argument in cases involving large banners placed at entrances to neutral employer establishments. See, e.g., Carpenters Local 1506 (AGC San

Diego Chapter, Inc.), 21-CC-3307, Appeals Minute dated August 22, 2002; Carpenters Local 184, Case 28-CC-971, Advice Memorandum dated August 17, 2004.

³ See, e.g., Local 78, Asbestos Lead & Hazardous Laborers, LIUNA (The Solaire), Case 2-CC-2627-1, 2-CP-1054-1, General Counsel's Minute dated August 5, 2005 [FOIA Exemption 5]